

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

FEB 02 2017

CASE NO. 2016 CP-10-4668

SC Court of Appeals

Kyle J. Kibler  
PLAINTIFF(S)

Basil C. Peyton and Origin Point Brands, LLC  
DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court; Defendants' Motion to Dismiss and Compel Arbitration is granted to the extent that the action is stayed and arbitration shall be compelled.

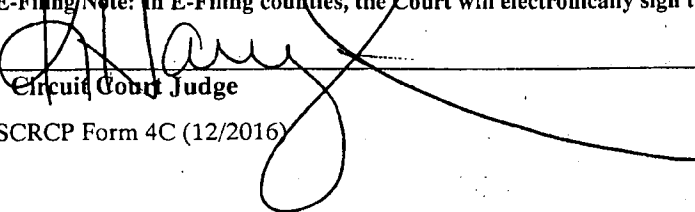
FILED  
2017 JAN 11 PM 2:45  
CLERK OF COURT

ORDER INFORMATION

This order  ends  does not end the case.  
Additional Information for the Clerk : \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.  
Note: Title abstractors and researchers should refer to the official court order for judgment details.  
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

  
Circuit Court Judge

2151  
Judge Code

1/6/2017  
Date



STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

KYLE J. KIBLER,

Plaintiff,

v.

BASIL C. PEYTON AND ORIGIN POINT  
BRANDS, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS FOR  
THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-10-4668

ORDER

**RECEIVED**

FEB 02 2017

SC Court of Appeals

FILED  
2017 JAN 11 PM 2:42  
JULIE J. ARMSTRONG  
CLERK OF COURT

THIS MATTER COMES BEFORE THE COURT pursuant to Defendants' Motion to Dismiss and Compel Arbitration following a hearing on January 4, 2017.

**Factual Background**

Plaintiff filed a Complaint in this case on September 1, 2016 alleging Defendants made defamatory statements regarding Plaintiff on multiple occasions during 2015 and 2016. Plaintiff is a former employee of Defendant Origin Point Brands, LLC and was terminated from his employment in January of 2015. Plaintiff had entered into the Executive Employment Agreement with Defendants which controlled the terms of Plaintiff's employment and "any dispute or controversy arising under or in connection with [the] Agreement." Defendants' Memorandum in Support of Motion to Dismiss and Compel Arbitration states termination was based on Defendants' opinion that Plaintiff "failed to effectively perform his duties as President and Chief Operation Officer." Defendants filed this Motion, arguing the Complaint should be dismissed and requesting the parties be compelled to arbitrate the matter. Defendants assert Plaintiff contractually agreed to arbitrate this matter pursuant to the Executive Employment Agreement.

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### Law and Analysis

The Executive Employment Agreement states in bold, underlined, capitalized language that it is subject to the South Carolina Uniform Arbitration Act (Title 15 Chapter 48) or the Federal Arbitration Act (9 U.S.C. §§1-16). The Federal Arbitration Act applies to any arbitration clause where there is a transaction “involving commerce.” 9 U.S.C. § 2. A pending action which is subject to arbitration under the Federal Arbitration Act may be stayed. 9 U.S.C. § 3.

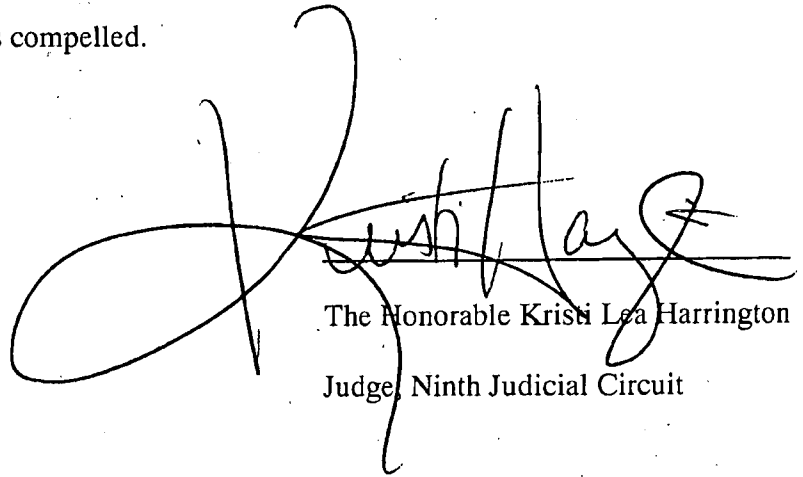
The South Carolina Supreme Court has also explained that the “federal policy favoring arbitration... is now binding even in state courts and supersedes inconsistent state law and statutes which invalidate arbitration agreements.” *Zabinski v. Bright Acres Assoc.*, 346 S.C. 580, 590 (2001). Arbitration provisions in contracts should be construed generally in favor of arbitration. *Landers v. Federal Deposit Ins. Corp.*, 402 S.C. 100, 109 (2013). The presumption to resolve issues in favor of arbitration is strengthened when an arbitration clause is broadly written. *Id.* Specifically, a clause which states arbitration for “all disputes ‘arising out of or relating to the contract is construed broadly.’” *Id.*

The parties entered into a contractual agreement which provides for mandatory arbitration of all claims arising “under or in connection with the [Executive Employment] Agreement” with Defendants. Plaintiff asserts that the defamation occurred *post-termination* and thus does not relate to the Executive Employment Agreement. Defendants have demonstrated the claims in Plaintiff’s Complaint relate to Plaintiff’s employment and the character of Plaintiff as an employee. Plaintiff’s Complaint also asserts defamation occurred in 2015, while Plaintiff was still employed under the terms of the Executive Employment Agreement during January of 2015. Considering the broad construction of this type of arbitration clause mandated by South Carolina law, the Court

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finds Plaintiff's Complaint should be stayed, and the parties are ordered to arbitrate this dispute pursuant to the terms of the Federal Arbitration Act.

Based on the above, it is therefore, ORDERED, ADJUDGED, AND DECREED that Defendant's Motion to Dismiss and Compel Arbitration is granted to the extent that the action should be stayed and arbitration is compelled.



The Honorable Kristi Lea Harrington  
Judge, Ninth Judicial Circuit

January 6, 2017  
Charleston, South Carolina